
**Business Rescue Proceedings Update - Report delivered to all known
Affected Persons**

In terms of Section 132 (3) (a) of Chapter 6 of the Companies Act 71 of 2008

In relation to

Avedia Energy (Pty) Limited (in business rescue)

REGISTRATION NUMBER: 2003/023054/07

Prepared by

Alison Timme

As Business Rescue Practitioner

31 January 2022

1. **Introduction**

1.1. This report is issued by the Business Rescue Practitioner in terms of section 132(3) (a) and (b)(ii) of the Companies Act 71 of 2008 ("Act") (the "Report") and delivered in accordance thereto to all known Affected Persons.

2. **Business Rescue Proceedings**

2.1. On 25 February 2020, Avedia Energy Pty Ltd (the "Company" or "Avedia") was placed under business rescue pursuant to a court order ("the Court Order") on this date;

2.2. Alison Timme was appointed as interim practitioner pursuant to the Court Order on 25 February 2020;

2.3. On 09 March 2020, Avedia instituted an application for leave to appeal the Court Order, thereby suspending the business rescue proceedings of Avedia and the interim appointment of Alison Timme;

2.4. The Western Cape High Court dismissed the application for leave to appeal on 19 March 2020;

2.5. On 26 March 2020, Avedia petitioned the Supreme Court of Appeal ("the SCA"), again suspending proceedings and the interim appointment of Alison Timme;

2.6. The petition to the SCA was dismissed on 14 August 2020;

2.7. On 26 August 2020, Avedia made application to the President of the SCA for a reconsideration of the dismissal of the petition ("the application for reconsideration");

2.8. The application for reconsideration was subsequently withdrawn on 1 September 2020 but replaced with Avedia petitioning the Constitutional Court for leave to appeal on the same date, thereby again suspending proceedings and the interim appointment of Alison Timme;

2.9. The leave to appeal was dismissed by the Constitutional Court on 2 November 2020, thereby lifting the suspension of proceedings and the suspension of Alison Timme's interim appointment;

2.10. Alison Timme's appointment as Business Rescue Practitioner was ratified by creditors at the section 147 meeting on the 18th of November 2020.

2.11. A summary of proceedings and main steps undertaken by the Business Rescue Practitioner in accordance with her statutory obligations are set out in the table below:

Event	Date
Court order to commence Business Rescue	25 February 2020
Alison Timme appointed as interim Business Rescue Practitioner	25 February 2020
Avedia institutes leave to appeal court order	09 March 2020
Western Cape High Court dismisses the application for leave to appeal	19 March 2020

Avedia petitions the SCA	26 March 2020
Petition to the SCA dismissed	14 August 2020
Avedia makes application to the President of the SCA for reconsideration	26 August 2020
Application for reconsideration withdrawn	1 September 2020
Avedia petitions the Constitutional Court for leave to appeal	1 September 2020
Constitutional Court dismisses leave to appeal	2 November 2020
Recommencement of Business Rescue Proceedings	2 November 2020
Holding of first creditors meeting (Section 147)	18 November 2020
Holding of first meeting of employees/representatives (Section 148)	18 November 2020
Alison Timme's appointment as Business Rescue Practitioner ratified by creditors	18 November 2020
Consent received for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings on 7 December 2020 to 26 February 2021	26 February 2021 (extension date)
Consent received for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings on 24 February 2021 to 30 April 2021	30 April 2021 (extension date)
Issue of First Update Report (Section 132(3)(a))	26 February 2021
Cylinder filling operations to be recommenced once remedial action is completed within the next 2 weeks.	29 March 2021
Engineers have been consulted to do a technical analysis on the remaining requirements in relation to the pipeline interconnection. TNPA meeting to be held on the 7 th of April 2021.	30 March 2021
Issue of Second Update Report (Section 132(3)(a))	31 March 2021
Recommencement of Cylinder filling operations at the Airport site.	9 April 2021
Interconnection Technical meeting held with the TNPA and Sunrise Energy. Engineers to continue working on the technical aspects in relation to the pipeline interconnection and flow meter.	15 April 2021
Consent received for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings on 30 April 2021 to 30 June 2021	30 June 2021 (extension date)
Issue of Third Update Report (Section 132(3)(a))	30 April 2021
Further remedial action undertaken to restart gas storage facility in Saldanha Bay	9 May 2021
Offers received from interested parties, negotiations and due diligences are under way.	14 May 2021
Short term storage and filling contract entered into to generate operational income	14 May 2021
Bulk gas purchase made to further operations at the Airport site.	27 May 2021
Issue of Fourth Update Report (Section 132(3)(a))	31 May 2021
Issue of Fifth Update Report (Section 132(3)(a))	29 June 2021
Issue of Sixth Update Report (Section 132(3)(a))	29 July 2021
Request for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings to 31 August 2021	29 July 2021 (request date)

Request for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings to 30 September 2021	30 August 2021 (request date)
Issue of Seventh Update Report (Section 132(3)(a))	31 August 2021
Request for extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings to 31 October 2021	23 September 2021 (request date)
Issue of Eight Update Report (Section 132(3)(a))	30 September 2021
Issue of Nineth Update Report (Section 132(3)(a))	29 October 2021
Request for a three business day extension of the publication of the BR Plan (Section 150(5)(b)) and business rescue proceedings to 4 November 2021	29 October 2021 (request date)
Publication of the business rescue plan in accordance with Section (150)(3)(5)	4 November 2021
Holding of voting meetings (and adoption of the Amended Business Rescue Plan) in accordance with Sections 152(2) and 152(3)(c)(ii)(a)	12 November 2021
Issue of Tenth Update Report (Section 132(3)(a))	30 November 2021
Issue of Eleventh Update Report (Section 132(3)(a))	13 December 2021
Issue of Twelfth Update Report (Section 132(3)(a))	31 January 2022

2.12. The BRP continues to oversee operational activities in line with her statutory obligations as referenced in prior reports.

3. **Funding of the business rescue**

3.1. Post commencement financing ("PCF") of R11.2 million have been secured to date (includes the additional PCF secured by the BRP in January 2022). Costs of the business rescue to date amount to circa R13 million and include inter alia operating costs, fees, remedial action, taxes and employee costs.

4. **Publication and adoption of the Amended Business Rescue Plan**

4.1. The reader is referred to the report of last month in respect of additional detail which is not repeated here.

4.2. The business rescue plan of Avedia Energy (Pty) Limited was published to Affected Persons in accordance with Section 150(2) on 4 November 2021.

4.3. The Section 151 meeting of creditors was held on 12 November 2021 where the business rescue plan was amended in accordance with Section 152(1)(d)(i).

4.4. The SFF Proposal contained in the amended business rescue plan was subsequently approved on a preliminary basis by creditors at the same meeting in accordance with Section 152(1)(e) and Section 152(2).

4.5. A shareholder voting meeting (in accordance with Section 152(3)(c)) was also held on 12 November 2021 where the SFF Proposal included in the amended business rescue plan was finally adopted.

5. **Implementation of the adopted business rescue plan – the SFF proposal**
- 5.1. The BRP commenced with implementation of the adopted rescue plan (as amended) in mid-November and immediately following adoption of the rescue plan on 12 November 2021.
- 5.2. The BRP and counter parties have made tangible progress with implementation of the SFF proposal, albeit that the SFF experienced delays in engaging a transaction adviser (the reason for which was the push back from the market over the tight time frame over the Christmas holiday period). This has delayed them in terms of the overall timetable and resulted in the initial backstop date of 31 January 2021 not being able to be met by them. The SFF is bound by various provisions in the PMFA in this respect.
- 5.3. By way of further update in respect of the progress made to date:
- 5.3.1. Transaction documents (share subscription, shareholders' agreement, amended MOI) have been drafted and are being finalised;
 - 5.3.2. The commercial agreements have been drafted and are being finalised; and
 - 5.3.3. The application for merger approval as required, of the South African Competition Commission, Competition Tribunal and/or Competition Appeal court is being finalised and expected to be submitted shortly once the remaining information has been received by the submitting attorneys.
- 5.4. The BRP has also since the date of the last update report concluded a written post commencement finance ("PCF") agreement with the SFF (signed in around early January 2022); funds have since flowed accordingly.
- 5.5. Given the delay that has occurred, the BRP has further implemented additional steps within the execution plan for the deal and on which the SFF has committed to achieve and to report on (for the month of February). A written letter was further received by the BRP from the Chief Operating Officer of SFF on 26 January 2022, confirming that they are confident that all approvals and procedures will be met by 28 February 2022. The SFF has further agreed to and confirmed that the time frames as set out within February 2022 and as stipulated by the BRP will be met.
- 5.6. Affected persons are reminded (and as highlighted in the rescue plan) that the timing for Competition Commission approval is subject to the relevant Commission's time frames and therefore wholly outside the control of both the SFF and Avedia (and thereby by extension to the BRP, acting on behalf of the Company). This will, on the basis that all approvals and transaction documents are concluded, be the remaining step required to close the deal.
- 5.7. Affected persons are further reminded of the amended clause as inserted into the business rescue plan (and as adopted on 12 November 2021) whereby should the back stop not be achieved by 28 February 2022 (for either of the proposals as presented in the aforementioned amended rescue plan), the BRP will be required to revert to creditors who will then either be able to vote on a further extension, or not.
- 5.8. The BRP is closely monitoring the process; the next written update is required from the SFF by 4 February 2022.

6. **Conclusion**

- 6.1. In light of the adopted Amended Business Rescue Plan which the BRP is currently implementing and likewise the securing (and receipt) of further PCF, the BRP remains of the view that there is still reasonable prospect to rescue the company.
- 6.2. Should any material changes to the estimated timing occur, or additional information come to light, the BRP will inform Affected Persons accordingly.

Yours sincerely

Alison Timme
Appointed Business Rescue Practitioner

SENT ELECTRONICALLY